CWP No.899 of 2007.

10.12.2007 Present : Mr.V.D.Khidtta, vice counsel for the petitioner.
Mr.M.S. Chandel, Advocate General, with Mr. R.M. Bisht, Dy.A.G. for respondents.

By means of this writ petition the petitioner has prayed that the respondents be directed to initiate proceedings to acquire his land comprising khata khatauni No.18/34, khasra Nos.85, 139, 133, 145 and 146 situated at Mouza Thaekra, Pargna Chandlog, Sub Tehsil Nerwa, Tehsil Chopal, District Shimla which has been utilized by the respondents for construction of the road, namely, Nerwa to Thakera.

The respondents in their reply have not admitted all the allegations made by the petitioner in this writ petition. The respondents have only admitted that after demarcation it has been found that the land of the petitioner situated in khasra Nos.139/1, 145, 146/1 measuring 0-04-42 hectares has been utilized by the respondents for the construction of the aforesaid road. The further stand of the respondent-State is that the petitioner had verbally agreed to give the land free of cost to the Department for public purpose for the construction of the aforesaid road.

By now the law is well settled that every citizen of this country has a right to hold property and his property cannot be taken by the State except by process of law. The version of the respondents that the petitioner had verbally consented to the land being taken over by the respondents cannot be accepted. No contemporaneous evidence of any nature has been placed on record to support this version of the respondents. Even otherwise we are of the considered view that even if there is no deed transferring the rights of a party to the State Government then also there must at least be some writing such as an affidavit or any other written document to indicate that the owner had agreed that the land be taken over and the owner would not claim any compensation for the same.

Keeping in view the aforesaid facts, we are of the view that the respondents are in illegal possession of the land of the petitioner comprising khasra Nos.139/1, 145, 146/1 measuring 0-04-42

hectares which is admitted by the respondents to have been utilized by them for the construction of the aforesaid road. We, therefore, direct that the respondent No.1 shall issue notification under Section 4 of the Land Acquisition Act, 1894 within two months from today for acquisition of the said land and shall complete the entire acquisition proceedings within 2 years from today. As far as the other claims of the petitioners are concerned the same are rejected. The writ petition is disposed of in the aforesaid terms. No costs.

(Deepak Gupta),
Judge

December 10, 2007. **(V.K. Ahuja)**
PV **Judge.**